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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,133	02/11/2004	Takehiro Horibe	023971-0379	2428

22428 7590 07/28/2005

FOLEY AND LARDNER
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WASHINGTON, DC 20007

EXAMINER

BENTON, JASON

ART UNIT	PAPER NUMBER
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3747

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,133

Applicant(s)

HORIBE ET AL.

Examiner

Jason Benton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 5, 7 and 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eshleman et al.

The patent by Eshleman et al. (6,340,019) shows an apparatus for protecting a fuel system component disposed on an engine body in a vehicle. A protector (110) includes a first wall (upper portion of 110) and a second wall (lower portion of 110) connected with the first wall. The first and second walls extend toward the engine body (Fig. 5) and cooperate with each other to surround a fuel system component (140). The second wall has one end opposed to the engine body with a clearance. A first fastening member (130) fixes the first wall to the engine body.

A first boss (unlabeled) receives the first fastening member and has a seat. The first boss is provided on the engine body (Fig. 5). The first wall includes a fixed portion fixed to the seat of the first boss in an over lapping state through the first fastening member and an abutting portion offset from the fixed portion in an axial direction of the first fastening member and opposed to a circumferential side surface of the first boss with a clearance (Fig. 4).

A first boss receives the first fastening member and has a seat. The first boss is provided on the engine body and the first wall includes a fixed portion fixed to the seat of the first boss in an overlapping state through the first fastening member and an abutting portion that is arranged so as to be displaced to an abutment position where the abutting portion abuts on a circumferential side surface of the first boss when a load is applied to the protector.

The fixed portion and the abutting portion are integrally formed by bending.

The fixed portion and the abutting portion are connected with each other in an overlapping state.

The engine body is connected with an intake manifold (150) arranged forward of the engine body in a fore-and-aft direction of the vehicle. The protector is arranged within a space defined between the intake manifold and the engine body.

The patent by Eshleman does not show specifically how much the protector is spaced apart from the fuel system component. It is the view of the examiner that the fuel component and the protector are not continuously connected, it is therefor inherent that an amount of space be present between the protector and the fuel system component.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eshleman et al. in view of Scollard et al.

The patent by Eshleman et al. does not show a second fastening member fixing the protector to the intake manifold. The patent by Scollard et al. further comprises a second fastening member (113, 115) fixing the protector to the intake manifold. In view of Scollard et al., it would have been obvious to anyone skilled in the art who wanted to securely fix the protective member to the engine to improve over Eshleman et al. by providing multiple fastening members (Col. 3, lines 2-5).

Allowable Subject Matter

Claims 5, 7, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 11 is allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Benton whose telephone number is (571) 272-4838. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (571) 272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JB


Henry C. Yuen
Supervisory Patent Examiner
Group 3700